

# EXHIBIT E



**FOLEY  
HOAG** LLP  
ATTORNEYS AT LAW

May 28, 2004

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Via E-mail and Federal Express

David I. Gindler, Esq.  
Jason G. Sheasby, Esq.  
Irell & Manella  
1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067

Re: *Biogen et al. v. Trustees of Columbia University in the City of New York*

Dear counsel:

This responds to Jason's letter of May 27, 2004 concerning the purported confidentiality of documents attached to our preliminary injunction reply brief.

Your assertions of confidentiality are baseless. As to the document from the '159 file history, you will note that each page bears the legend, "Copy provided by USPTO from the PACR Image Database on 5-11-2004." As this legend indicates, it is the Patent Office itself that has made the '159 file history available to the public. Thus, if you have any complaint with anyone concerning the disclosure of this document, it is with the Patent Office. Further, nothing in the document is a trade secret, as the document simply recites claimed inventions (along with *yet another request for an extension of time*). Unless Columbia is pursuing claims that are not described in and enabled by the specification, Columbia is claiming inventions that were disclosed and a matter of public record since the issuance of the '216 patent more than two decades ago.

As to the license agreements, your assertion of confidentiality is preposterous. There is no obligation of confidentiality either in the license agreements themselves or anywhere else that prohibits Biogen and Genzyme from disclosing them to anyone if they wish to do so. Indeed, Amgen and Immunex disclosed their unredacted license agreements with Columbia when they attached them to their original and amended complaints, and I am not aware that any court has ordered them to be sealed. Amgen's counsel also report that Columbia made no complaint about the disclosure of those license agreements.

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Columbia's desire to keep all of this material confidential from plaintiffs and the District Court is revealing, and explains your failure to produce the '159 file history in discovery. We explicitly requested the '159 file history in document requests served in November, 2003 (*see, e.g.*, request nos. 2 and 12), and yet we have received no meaningful production of documents from Columbia to this day. Given your complete stonewalling on our discovery requests and your demands that plaintiffs destroy all copies of the '159 file history, it is apparent that Columbia's goal is to conceal relevant information from the Court and the parties in connection with the pending motion for a preliminary injunction against Columbia's repressive effort to terminate plaintiffs' licenses to the '159 application.

In this regard, please produce, *immediately*, the entire '159 file history and all other documents concerning the '159 application, as requested more than six months ago, so that we will not be further hampered in the court proceedings.

For the reasons set forth above, we will not accede to the improper demand contained in your letter.

We look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Claire Laporte". The signature is fluid and cursive, with the first name "Claire" and last name "Laporte" clearly distinguishable.

Claire Laporte

cc: Donald R. Ware, Esq.